Supreme Court, U.S.
FILED
OCT 12 2000
CLERK

(4)

No. 00-361

IN THE

Supreme Court of the United States

MARGARET KELLY MICHAELS,
Petitioner,

v.

GEORGE MCGRATH, RICHARD MASTROANGELO, SARA SENCER-McARDLE, LOUIS FONNELARAS, AND SUSAN ESQUILIN,
Respondents.

On Petition for a Writ Of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of the Respondent Louis Fonnelaras in Opposition to Petition for Writ Of Certiorari

John J. Farmer, Jr.
Attorney General of New Jersey
Attorney for Respondent Louis Fonnelaras
R.J. Hughes Justice Complex
PO BOX 116
Trenton, New Jersey 08625
(609) 984-1063

Mary C. Jacobson
Assistant Attorney General

Karen L. Jordan
Deputy Attorney General
Counsel of Record and On the Brief

1990

QUESTION PRESENTED

Is a state Division of Youth and Family Services investigator entitled to qualified immunity from payment of damages under 42 U.S.C. §1983 for the manner in which he investigated reports that a day care worker had sexually abused children at the Wee Care Day Nursery in 1985?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	4
REASONS WHY THE PETITION SHOULD BE DENIED	
THE THIRD CIRCUIT CORRECTLY DETERMINED THAT QUALIFIED AND ABSOLUTE IMMUNITY PROTECT THE INVESTIGATORS AND PROSECUTOR FROM MICHAELS' CIVIL DAMAGE CLAIM AND THE THIRD CIRCUIT'S DECISION IS NOT IN CONFLICT WITH DECISIONS IN OTHER CIRCUITS	6
CONCLUSION	14

TABLE OF AUTHORITIES

Cases:	Page
Anderson v. Creighton, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)	7
Buckley v. Fitzsimmons, 509 U.S. 259, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993)	9
Buckley v. Fitzsimmons, 20 F. 3d 789 (7th Cir. 1994), *cert. den.* 513 U.S. 1085, 115 S. Ct. 740, 130 L. Ed. 2d 642 (1995)	4, 8
Burns v. Reed, 500 U.S. 478, 11 S. Ct. 1934, 114 L. Ed. 2d 547 (1991)	4,9,11
Clanton v. Cooper, 129 F. 3d 1147 (10th Cir. 1997)	5,8,9
Devereaux v. Perez, 218 F. 3d 1045 (9th Cir. 2000)	10,12
Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L.Ed. 2d 396 (1982)	6,7
Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976)	6,9
Michaels v. State of New Jersey, 222 F. 3d 118 (3rd Cir. 2000)	1,2,3
Michaels v. State of New Jersey, 50 F.Supp. 2d 353 (D.N.J. 1999)	1,2,3,4,5
State v. Michaels, 136 N.J. 299, 642 A. 2d 1372 (1994)	1,2,3,6,12
State v. Michaels, 264 N.J.Super. 579, 625 A. 2d 489 (App. Div. 1993)	2,6,10,12

Myers v. Morris, 810 F. 2d 1437 (8th Cir.), *cert. den.*, 484 U.S. 828, 108 S. Ct. 97, 98 L. Ed. 2d 58 (1987) 10,11,12

Spurlock v. Satterfield, 167 F. 3d 995 (6th Cir. 1999) . . 9,10

Seigert v. Gilley, 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991) 13

Tenenbaum v. Williams, 193 F. 3d 581 (2d Cir. 1999) . 11,12

Zahrey v. Coffey, 221 F.3d 342 (2d Cir. 2000) 9,11

Statutes:

42 U.S.C. §1983 2,3,6,7,10

N.J.Stat. Ann. § 9:6-8.11 1

STATEMENT OF THE CASE

The District Court granted summary judgment to Louis Fonnelaras, an employee of the State of New Jersey's Division of Youth and Family Services ("DYFS"), and other defendants on the grounds of qualified and absolute immunity on May 26, 1999. (Supplemental Appendix), *Michaels v. State of New Jersey*, 50 F.Supp. 2d 353 (D.N.J. 1999). The Third Circuit affirmed on June 5, 2000. (Appendix),[1] *Michaels v. State of New Jersey*, 222 F. 3d 118 (3rd Cir. 2000). Michaels seeks review of these decisions in the Supreme Court.

Fonnelaras was one of the individuals who investigated reports to DYFS in 1985 that Michaels was sexually abusing children while she was employed at the Wee Care Day Nursery. DYFS has a statutory duty to "immediately take such action as shall be necessary to insure the safety of the child" when it receives a complaint of child abuse. *See*, N.J. Stat. Ann. §9:6-8.11. DYFS assigned Fonnelaras to investigate after it received the complaint about Michaels. As part of his assignment, he submitted a report to the DYFS Bureau of Licensing in December 1985. He also testified in criminal proceedings that the Essex County Prosecutor brought against Michaels.

There were three grand jury indictments against Michaels, on June 6, 1985, July 30, 1985, and November 21, 1985. Michaels was arrested after the first indictment, on June 12, 1985. In April 1988 a jury convicted her on 115 counts of aggravated sexual assault, sexual assault, endangering the welfare of the children, and terroristic threats. *Michaels*, 136 N.J. at 305-306, 642 A. 2d at 1375-1376. The New Jersey Appellate Division reversed the convictions on March 26, 1993 and remanded for a new trial.

---

[1]Citations to the District Court and Third Circuit opinions will be preceded by the letters "Sa" for the appendix to the petition for certiorari and "PSa" for the supplemental appendix, with parallel citations to the reported cases.

State v. Michaels, 264 N.J.Super. 579, 629-632, 625 A. 2d 489, 516-518 (App. Div. 1993). The Appellate Division directed that a pretrial hearing would be required to assess the reliability of the children's testimony and statements if the prosecutor decided to retry the case. The Supreme Court of New Jersey agreed that a pretrial hearing was required, addressing the admissibility of this evidence as the sole issue on a petition for certification by the prosecutor. 136 N.J. at 324, 642 A. 2d at 1385. On December 1, 1994, the prosecutor dismissed all charges against Michaels. PSa8, 50 F. Supp. 2d at 357. Michaels brought this civil damage action under 42 U.S.C. §1983 in the District Court in 1996. *Id.*

The New Jersey Appellate Division decision described the nature of the sexual abuse reported by the children. *Michaels*, 264 N.J. Super. at 588-592, 625 A. 2d at 494-593. The Appellate Division and the New Jersey Supreme Court analyzed the interviewing techniques used by the defendants at length, comparing them to the considerable body of professional literature available in 1993 and 1994, and found that, in hindsight, the methods used were "improper" and that there was a "substantial likelihood" that the evidence was "unreliable." 136 N.J. at 324, 642 A. 2d at 1377; *see, generally*, 264 N.J. Super. 579, 625 A. 2d 489. Nearly all of the articles and other authorities cited by the New Jersey courts were published after the 1985 investigation.

The Third Circuit held that, while improper questioning techniques may violate the constitutional rights of the person being questioned, there is no violation of any constitutional right of a third party. Pa11-12; 222 F.3d at 123. Since the interviewing did not violate Michaels' constitutional rights, the actions of the defendants in investigating the child sexual abuse allegations are protected from Michaels' civil damage claims by qualified immunity. *Id.* The Court also found that the presentation of evidence before the grand jury and at trial was absolutely privileged, even if the statements and

testimony of the children were so unreliable that Michaels' constitutional rights were violated. *Id.* The Third Circuit, in finding that the presentation of evidence was protected absolutely, noted that any harm to a falsely charged defendant is remedied by the safeguards built into the judicial system-probable cause hearings, dismissal of the charges, and state rules of professional conduct governing prosecutors. Pa10; *Id.* at 122. The Third Circuit affirmed the grant of summary judgment to the defendants on the basis of these immunities.

The District Court had taken a step further, and also correctly held that, even if the questioning of the children violated a constitutional right, the methods for interviewing victims of child sexual abuse were not clearly established until at least 1993, when the New Jersey appellate court first ruled in this case. PSa22-29; 50 F.Supp. 2d at 363-366. The District Court said that "[d]fendants are not required to predict what tenets will emerge in the area of interviewing alleged child sexual abuse victims," "nor are they required to pay for their mistakes that predated and, indeed, inspired, a change in the law." PSa26-27; 50 F.Supp. 2d at 365.

Michaels' constitutional rights have been vindicated by the reversal of her conviction. The actions of Louis Fonnelaras in investigating the complaints of child sexual abuse satisfy the standard for qualified immunity, and the presentation of evidence to the grand jury and the trial court is protected by absolute immunity. Under the circumstances of this case, Michaels is not entitled to an additional civil damages remedy under 42 U.S.C. §1983 against Louis Fonnelaras. Her petition for a writ of certiorari should be denied.

SUMMARY OF ARGUMENT

Margaret Kelly Michaels has failed to establish that there are special and important reasons to review the decision of the Third Circuit that the investigators and prosecutor are entitled

to qualified and absolute immunity. The criminal process provided her with a remedy, the reversal of her conviction and the requirement that a hearing be held before the evidence developed in the investigation could be used against her in a new trial. The prosecutor has dismissed the charges. The judicial process has protected her constitutional rights. *See Burns v. Reed,* 500 U.S. 478, 492, 11 S. Ct. 1934, 1942, 114 L. Ed. 2d 547, 562 (1991).

A money damages remedy is not needed to reinforce the admonition to government officials that the techniques they use in investigating child sexual abuse complaints can have a profound effect on the reliability of the evidence presented at trial. There is no genuine conflict in the circuits on the standards for qualified and absolute immunity in child sexual abuse cases. The circumstances of this case are unlikely to be repeated. This high profile prosecution of allegations of child sexual abuse led to the development of a body of information analyzing and criticizing the methods used to interview the children and it is unlikely that government officials would use those methods in another case.

The defendants have satisfied the standards for qualified and absolute immunity. Fonnelaras did not violate any clearly established constitutional right of Michaels when he interviewed the children, and the use of the children's statements and testimony by the prosecutor to seek a grand jury indictment and conviction at trial was absolutely privileged. The Third Circuit's analysis follows the functional approach used in *Burns* and other cases. This is not a case of fabrication of evidence or coercion of a confession, where the constitutional right is clearly established.

The Third Circuit relied primarily on *Buckley v. Fitzsimmons*, 20 F. 3d 789 (7th Cir. 1994), *cert. den.* 513 U.S. 1085, 115 S.Ct. 740, 130 L. Ed. 2d 642 (1995), to hold that the later presentation of evidence at trial does not abrogate qualified immunity otherwise available for

investigatory functions. The dissent in that case does not, as Michaels argues, create the kind of conflict that requires review by this Court. The decisions in this case and in *Buckley* can also be reconciled with the Tenth Circuit's decision in *Clanton v. Cooper*, 129 F.3d 1147 (10th Cir. 1997), because the challenged evidence in *Clanton* was not presented in a judicial proceeding, and the police officer's use of a coerced confession to obtain an arrest warrant violated a clearly established constitutional right. Here, the evidence was only used in judicial proceedings that have traditionally been protected by absolute immunity and the methods of interviewing child sexual abuse victims were not clearly established.

The Third Circuit did not reach the issue of whether the constitutional right alleged to have been violated was clearly established. The District Court held that constitutionally acceptable methods of questioning children were not clearly established in 1985, when the investigation occurred. PSa28, *Michaels*, 50 F. Supp. 2d at 365-366. This additional reason would result in the dismissal of the complaint against the defendants here.

REASONS WHY THE PETITION SHOULD BE DENIED

THE THIRD CIRCUIT CORRECTLY DETERMINED THAT QUALIFIED AND ABSOLUTE IMMUNITY PROTECT THE INVESTIGATORS AND PROSECUTOR FROM MICHAELS' CIVIL DAMAGE CLAIM AND THE THIRD CIRCUIT'S DECISION IS NOT IN CONFLICT WITH DECISIONS IN OTHER CIRCUITS.

Michaels contends that the application of qualified and absolute immunity leaves her and other criminal defendants without a damages remedy when their constitutional rights may be violated during the investigation and prosecution of allegations of child sexual abuse. The decisions of the New

Jersey Appellate Division and the New Jersey Supreme Court protected her right to a fair trial under the Due Process Clause of the Fourteenth Amendment by reversing her conviction and requiring a hearing to determine the reliability of the statements and testimony of the child victims before this evidence could be used against her in a new trial. *See*, *Michaels*, *supra,* 136 N.J. at 316, 642 A. 2d at 1380 (1993). Although she requested that the indictment be dismissed, the Appellate Division declined to do so. *State v. Michaels*, 264 N.J.Super. 579, 625 A. 2d 489 (App. Div. 1993). There is no finding by a court that her arrest and detention after indictment by the grand jury were in violation of the Fourth Amendment protection against seizure without probable cause. Moreover, Michaels raised the issue of her pre-conviction detention for the first time on appeal to the Third Circuit, and her claims in this regard would be time-barred. Michaels' ability to collect damages from government employees is at stake here, but the protection of her constitutional rights is not.

It is well settled that immunities apply to protect government officials in §1983 damages cases. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed. 2d 396 (1982) (qualified immunity for certain government functions); *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L. Ed. 2d 128 (1976) (absolute immunity of prosecutor). As this Court said twenty-five years ago in *Imbler*, "To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." 457 U.S. at 427, 102 S. Ct. 984, 993, 47 L. Ed. 2d at 141. The analysis supporting these immunities balances the compelling policy reasons for shielding public officials from damages suits for their actions in investigating and prosecuting allegations of criminal conduct against the importance of vindicating constitutional rights by the payment of damages in addition to other remedies. *Id*. In every case where an immunity applies, the plaintiff in a §1983 case will be without a civil

damages remedy. The lack of a damages remedy for Michaels is not a reason to review the Third Circuit opinion dismissing her claims.

A government official is entitled to qualified immunity from civil damages if his conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow*, 457 U.S. at 818, 102 S. Ct. at-2738, 73 L. Ed. 2d at 410. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton,* 483 U.S. 635, 640, 107 S. Ct. 3034, 3039, 97 L. Ed. 2d 523, 531 (1987). The unlawfulness must be apparent. *Ibid*. The government official must be able to reasonably anticipate which actions will subject him or her to a damages suit. Immunity defenses should be decided on summary judgment to avoid subjecting government officials to the disruption and costs attendant to discovery and trial. *Harlow*, 457 U.S. at 818, 102 S. Ct. at 2738, 73 L. Ed. 2d at 410-411.

The inquiry into whether qualified immunity applies has been characterized as having two components. First, a court must determine whether there has been a violation of a constitutional right, and, second, whether the constitutional right was clearly established at the time of the violation. *Seigert v. Gilley*, 500 U.S. 226, 111 S. Ct. 1789, 114 L. Ed. 2d 277 (1991). The Third Circuit in this case held that there was no violation of Michaels' constitutional rights by the investigators in this case because the interviews of the children did not violate Michaels' constitutional rights. It was only when the prosecutor presented the children's statements and testimony to the grand jury and at trial that a constitutional violation could have occurred. The acts surrounding the selection and presentation of this evidence to the grand jury and at trial were protected by absolute immunity. Therefore, the Third Circuit concluded, there was no constitutional violation and no need to analyze whether

constitutionally acceptable methods for questioning the child sexual abuse victims were clearly established in 1985.

Michaels urges this Court to adopt the dissent in *Buckley v. Fitzsimmons*, 20 F. 3d 789 (7th Cir. 1994), *cert. den.* 513 U.S. 1085, 115 S.Ct. 740, 130 L. Ed. 2d 642 (1995), where Judge Fairchild would have abrogated a prosecutor's absolute immunity if the presentation at trial of evidence the prosecutor allegedly fabricated was the but-for cause of a constitutional violation. This Court has already reviewed and denied the petition for certiorari in *Buckley* and thereby declined to adopt the reasoning in Judge Fairchild's dissent. Michaels styles the dissent as creating a "conflict" with the majority opinion but this is not the kind of conflict that warrants review. *Buckley* is simply a case where there is a dissenting opinion, which, by definition, would be at a variance with the majority.

Michaels cites *Clanton v. Cooper*, 129 F.3d 1147 (10th Cir. 1997), as a case in another circuit that is in conflict with the Third Circuit holding in this case. The Third Circuit took care to distinguish *Clanton*, which held that a police officer who presented a coerced confession to a magistrate to obtain an arrest warrant was not entitled to qualified immunity. Here, the investigators took no action with respect to the children's statements or testimony that violated Michaels' constitutional rights and their qualified immunity is preserved. The contested evidence was only presented to the grand jury and at trial, actions that are traditionally protected by absolute immunity.

The Third Circuit did not err in distinguishing *Clanton*, as Michaels argues, because it was under the impression there was evidence other than the children's statements and testimony. The Third Circuit's analysis depends on the type of judicial proceeding and the immunity applicable to the presentation of evidence at that type of proceeding. Whether there was corroborating evidence in addition to the children's statements and testimony did not enter into its reasoning.

Immunity analysis focuses on the nature of the function performed, not the identity of the person who performed it. *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606 2613, 125 L. Ed. 2d 209, 223 (1993). The investigators' function here was limited to questioning the children. The function of presenting evidence to a grand jury or at a trial is a separate activity that is entitled to absolute protection under *Imbler* and *Burns*. The safeguards of a judicial proceeding reduce the need for damages actions to control unconstitutional conduct. *Burns*, 500 U.S. at 492, 111 S. Ct. at 1942. Qualified immunity would rarely be available if it were lost solely because the evidence generated in an investigation was later presented to a grand jury or at a trial. It would be contrary to the functional approach to hold the investigators here liable to pay civil damages because the children's testimony and statements were later used in a criminal judicial proceeding.

Clanton is distinguishable for another reason, and that is that the constitutional right not to be deprived of liberty based on a coerced confession or fabricated testimony was clearly established. 129 F.3d at 1154-1155. In contrast, in 1985, there was no clearly established standard for conducting a child sexual abuse investigation. A few circuits have held, in the context of fabricated evidence or coerced confessions, that an investigator or prosecutor performing investigative functions is not entitled to qualified or absolute immunity if the evidence is presented at trial. *Zahrey v. Coffey*, 221 F.3d 342 (2d Cir. 2000); *Spurlock v. Satterfield*, 167 F. 3d 995 (6th Cir. 1999). In *Coffey*, the Second Circuit held that there was a clearly established constitutional right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigative capacity. 221 F. 3d at 349. In *Satterfield*, the Court found a violation of a constitutional right because a reasonable police officer would know that the fabrication of evidence violates an individual's constitutional rights. 167 F. 3d at 1005. Since the right in those cases was clearly established, the defendants could not

meet the test for qualified immunity. The fact that the evidence was later used against the criminal defendant was more relevant to causation than to the availability of an immunity.

This case does not involve the fabrication of evidence or coercion of adult witnesses. Instead, the state court held that the manner of questioning the children was improper based on the court's comprehensive review of literature on interviewing child victims of sexual abuse some eight years after the defendants here conducted the interviews. *Michaels*, 264 N.J. Super. at 622-630, 625 A. 2d at 511-516. All except one of the many authorities that the court discussed were published after 1985. Indeed, the questioning of child victims of sexual abuse remains problematic. The Ninth Circuit recently held that:

> there is no constitutional due process right to have child witnesses, in a child sexual abuse investigation, interviewed in a particular manner or pursuant to a certain protocol. Devereaux has failed to show that the state defendants violated a constitutional right that is sufficiently particularized so that a reasonable official would understand that any due process right was violated. [*Devereaux v. Perez*, 218 F. 3d 1045, 1053-1054(9th Cir. 2000)]

The Eighth Circuit earlier rejected a §1983 damages claim in a case where a conviction for sexual abuse was overturned under circumstances nearly identical to those here, in *Myers v. Morris*, 810 F. 2d 1437 (8th Cir.), *cert. den.*, 484 U.S. 828, 108 S. Ct. 97, 98 L. Ed. 2d 58 (1987), abrogated on other grounds, *Burns*, *supra*. As the Court said in *Myers*, "[w]hile the record contains examples of investigative

mistakes and flawed interrogation, particularly from the standpoint of successful prosecution of those implicated by children who have experienced extensive questioning, an imperfect investigation without more does not deprive the investigators of qualified immunity." *Id*. at 1460. The conclusion of the *Myers* Court that the interviewing conduct occurred in a "grey area of investigative procedure as to which there were, and probably still are, less than clearly established legal norms" is apt here, where the investigation took place contemporaneously with the one in *Myers*. *Id*. at 1461. The same techniques were used here as in *Myers*--continued questioning about specific acts despite the victim's initial denials, multiple interviews, use of anatomically correct dolls, direct questions regarding touching parts of the body, and questioning by a person the child may have wished to please. *Id*. at 1461.

The Circuit Court of Appeals. that denied qualified immunity in *Coffey*, *supra*, a fabrication case, found that there was qualified immunity in a case involving suspicion of child sexual abuse, in *Tenenbaum v. Williams*, 193 *F. 3d* 581 (2d Cir. 1999). The Second Circuit recognized in *Tenenbaum* that there are heightened societal interests in the protection of child victims of sexual abuse. Such concerns include the safety and welfare of children from the point of view of the community and the individual child's psychological well-being. "When child abuse is asserted, the child's welfare predominates over other interests of her parents and the State." *Id*. at 594. These compelling interests distinguish child sexual abuse cases from other kinds of criminal proceedings.

The Court held in *Tenenbaum* that child welfare caseworkers were entitled to qualified immunity after they removed a five year old child from school and took her to a hospital, where doctors performed a physically intrusive examination to determine whether she had been sexually abused. The caseworkers did not obtain the parents' consent

or a court order, and the suspicion of sexual abuse was based on minimal and ambiguous communications by the girl to her teacher. The Court emphasized the difficult choices faced by those who are investigating allegations of abuse of children. If they err in interrupting parental custody they risk accusations that they are violating the parents' constitutional rights, but if they err in not removing the child, the child may be injured or say her constitutional rights are being violated. Caseworkers of reasonable competence could disagree on whether this action was legal. *Id.* at 596. The protection of qualified immunity is particularly important in this context to enable government officials investigating child abuse allegations "to fulfill their crucial duties safely and effectively." *Id.* at 596-597. The Second Circuit's generous interpretation of qualified immunity in a child sexual abuse case in *Tenenbaum* was notably different from its denial of immunity for the evidence fabrication allegations in *Coffey*.

The Third Circuit correctly decided that no constitutional right had been violated and no damages are available against these officials. Summary judgment would be affirmed, as well, based on the second part of the *Seigert* immunity analysis, because the methods of questioning child sexual abuse victims were highly undeveloped in 1985, as recognized in *Myers*, *supra*, and have been the subject of extensive and conflicting commentary in the professional literature since then. *See*, *State v. Michaels*, 136 N.J. 299, 642 A. 2d 1372 (1994); *State v. Michaels*, 264 N.J. Super. 579, 625 A. 2d 489 (App. Div. 1993); *Devereaux*, *supra*. The questioning of the children in this case did not violate clearly established constitutional techniques for obtaining reliable evidence from child victims of sexual abuse. *Devereaux* and *Tenenbaum*, decided in 2000 and 1999, respectively, strongly suggest that acceptable methods for investigating these kinds of allegations are still far from clear, and decisions by investigators that may seem shocking in hindsight are still entitled to qualified immunity.

Michaels' constitutional rights were protected by the state court ruling that the children's statements and testimony could not be used to prove criminal charges against her until or unless the evidence was proven to be reliable in a hearing before a new trial on the charges. That decision vindicated any potential violations of her constitutional rights. This is not a case where the individual defendants should be made to pay money damages to reinforce the protection of the constitutional rights of those who are accused of child sexual abuse. The defendants are entitled to qualified and absolute immunity under well established principles that are not in conflict in the circuits as those principles have been applied to this sensitive and uncertain area of questioning child sexual abuse victims. The petition for a writ of certiorari should be denied.

CONCLUSION

For the reasons stated the petition of Margaret Kelly Michaels for a writ of certiorari should be denied.

Respectfully submitted,

John J. Farmer, Jr.
Attorney General of New Jersey
Attorney for State Respondent

Mary C. Jacobson
Assistant Attorney General

Karen L. Jordan
Deputy Attorney General
Counsel of Record and On the Brief

R.J. Hughes Justice Complex
PO BOX 116
Trenton, New Jersey 08625
(609) 984-1063